IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

NAGPUR BENCH, NAGPUR

Criminal Application No.2928 of 2005

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the ground that the charge sheet was filed alleging, amongst others things, evasion of excise duty to the tune of Rs.46,11,394.80 ps and that punishment prescribed for the said offence u/s. 108 of the Bombay Prohibition Act would have enabled the Magistrate to impose a fine extending to the amount of such excise duty, which would have been beyond the sentencing power of the Magistrate. The learned Sessions Judge, after considering the arguments advanced and the Authorities cited before him, came to the conclusion that should, upon conviction, the learned Magistrate conclude that the case warrants a sentence which the Magistrate is not competent to pass, he could invoke provisions of Section 325 of the Code of Criminal Procedure and forward the accused to the Court of the Chief Judicial Magistrate. The learned Sessions Judge, therefore, rejected the application.

The State challenges the said order on the ground that the case involves an economic crime which may entail imposition of fine of Rs. 46,11,394.80 beyond the sentencing power of Magistrate and therefore, the case ought to have been conveniently brought before the Chief

Judicial Magistrate rather than before the J.M.F.C. Nandura.

I have gone through the relevant provisions of Section 108 of the Bombay Prohibition Act and Section 325 of the Code of Criminal Procedure.

Had it been the case that the minimum sentence prescribed for the offence was more than the sentencing power of the Magistrate, it would have been appropriate to have the proceedings instituted in the Court of the Chief Judicial Magistrate itself since the Magistrate would have been incompetent to impose minimum sentence. Though Section 108 of the Bombay Prohibition Act provides for imposition of fine which may extend to the amount of evasion of excise duty, it does not prescribe any minimum sentence or minimum amount of fine. Since the fine amount extends to the amount of evasion of excise duty, it cannot be said that the learned Sessions Judge was in error in refusing to transfer the proceedings from the Court of the J.M.F.C. Nandura to the Court of the C.J.M. Buldana. He was right in observing that should the Magistrate hold the accused guilty and find

that he has got inadequate sentencing power to deal with the matter, he could u/s. 325 of the Code of Criminal Procedure refer and forward the case to the C.J.M. In this view of the matter, no case is made out for invocation of inherent jurisdiction of this Court or to order transfer of the case in exercise of powers u/s.407 of the Code. The application is, therefore, rejected.

Interim orders stands vacated.

JUDGE

jaiswal